

Mailed

SEP. 9 1991

Decision 91-09-023. September 6, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
PACIFIC GAS AND ELECTRIC COMPANY for)
authority to revise its gas rates)
and tariffs effective April 1, 1990,)
in its Annual Cost Allocation)
Proceeding.)

(U 39 G)

ORIGINAL

Application 89-08-024
(Filed August 15, 1989)OPINIONSummary

Toward Utility Rate Normalization (TURN) requests compensation of \$71,015 for its contributions to Decision (D.) 90-04-021 in this proceeding, Pacific Gas and Electric Company's (PG&E) second Annual Cost Allocation Proceeding (ACAP). We find that TURN made a substantial contribution to this decision, and we award compensation of \$67,865.

Introduction

The ACAP was established for the purpose of estimating certain gas utility costs and revenues. Fundamentally, the development of certain of these estimates was highly controversial due to the fact that PG&E is at risk for noncore revenue recovery between ACAP decisions under the regulatory structure instituted in May 1988.

Issues related to the costs of gas, alternate fuels, appropriate discount adjustment methodology, utility revenue requirement and cost allocation were resolved in D.90-04-021.

TURN has already been found eligible for compensation in this proceeding by D.90-09-024, dated September 12, 1990. TURN filed its request for compensation on October 10, 1990. No party filed a response to TURN's request.

Rule 76.56 of the Commission's Rules of Practice and Procedure governs requests for compensation:

"Following issuance of a final order or decision by the Commission in the hearing or proceeding, a customer who has been found by the Commission...to be eligible for an award of compensation may file within 30 days a request for an award. The request shall include, at a minimum, a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding...."

TURN's request met the requirements of Rule 76.56.

Substantial Contribution

TURN states it made a "substantial contribution" to D.90-04-021. Rule 76.56 requires such a substantial contribution and Rule 76.52(g) defines substantial contribution:

"'Substantial contribution' means that, in the judgment of the Commission, the customer's presentation has substantially assisted the Commission in the making of its order or decision because the order or decision had adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer."

TURN contends its accomplishments in this proceeding far exceeded these minimum requirements for establishing a substantial contribution. TURN points out it prevailed at least in part on virtually every major issue area that it addressed in the case. In particular, TURN's primary recommendation that the Commission base its cost of gas estimates on existing "rates in effect" was adopted with only minor updating changes. The Commission commented favorably on TURN's proposal in the context of its discussion of Southwest supplies, Pacific Gas Transmission (PGT)/Canadian purchases and California supplies.

While TURN argues its "rates in effect" proposal alone is a substantial contribution, TURN also significantly contributed on

the discount adjustment methodology issue. Even though the Commission selected DRA's approach for implementation, TURN points out that the Commission stated that it found merit in TURN's proposal and ordered workshops aimed at developing a consistent methodology for all three major gas utilities. TURN states that it actively participated in the workshops moderated by the Commission Advisory and Compliance Division (CACD). TURN alleges that the CACD workshop report established a base case methodology that generally followed TURN's recommendations. Thus, TURN argues that its participation impacted not only D.90-04-021 but all future ACAPS, through the development of a base case methodology.

In addition, TURN contends it offered significant analysis and argument in support of a higher exit cost estimate than was proposed by PG&E in the discount adjustment calculation. The Commission concluded that: "PG&E's discount adjustment calculation should not be adopted because it improperly excludes demand charges from its exit cost calculations" (D.90-04-021, Conclusion of Law 33, p. 104).

TURN maintains that its proposal to eliminate the Cogeneration Shortfall Account (CSA) was also adopted. TURN's objection to the Federal Executive Agencies' (FEA) proposed cost reallocation was adopted by the Commission when the Commission found that "the FEA proposal is prohibited at this time by [Public Utilities] Code § 739.6" (D.90-04-021, p. 85).

And lastly, TURN prevailed on two residential rate design issues in this case. First, the Commission agreed with TURN in rejecting DRA's monthly customer charge proposal. Second, the Commission limited the tier differential reduction to 20% as proposed by both TURN and DRA.

TURN maintains that all of these issues indicate that it made substantial contributions in virtually every issue area that it addressed in this case.

We agree that TURN correctly describes its valuable participation in this proceeding. TURN's participation went beyond the minimum requirements set forth in Rule 76.56. We adopted many, if not most, of TURN's positions. Clearly, TURN made a substantial contribution to D.90-04-021. Compensation

Rule 76.60 sets the bounds for the calculation of compensation:

"[The calculation] shall take into consideration the compensation paid to persons of comparable training and experience who offer similar services. The compensation awarded may not, in any case, exceed the market value of services paid by the Commission or the public utility, whichever is greater, to persons of comparable training and experience who are offering similar services."

TURN seeks total compensation of \$71,015, summarized as follows:

Attorney/Witness Fees:

M. Florio

273.0 Hours x \$200 = \$54,600

24.5 Hours x \$175 = 4,287

Attorney Fees:

J. Singer

7.50 Hours x 140 = 1,050

M. Barmore

1.00 Hour x 140 = 140

Witness/Consulting Fees:

W. Marcus -- JBS Energy, Inc.

46.75 Hours x 120 = 5,610

G. Schilberg -- JBS Energy, Inc.

21.00 Hours x 80 = 1,680

J. Nahigian -- JBS Energy, Inc.

17.00 Hours x 60 = 1,020

Other Reasonable Cost:

Copying Expenses	1,449
Postage Costs	356
Long-Distance Telephone	124
Fax Charges	88
Witness Expenses	443
Attorney Expenses	168

TOTAL \$71,015

TURN provided a more detailed breakdown of these items in Appendix A to its Request for Compensation. The following The Proposed Attorneys' Rates and "Efficiency Adder"

In this case, TURN is requesting the same \$200 hourly rate for Mr. Florio's time that the Commission approved for the majority of his work in the last PG&E ACAP (D.90-01-050). This rate consists of the previously approved \$175 "base fee" plus a \$25 per hour "efficiency adder," which recognizes the cost-effectiveness of Mr. Florio's dual role as both attorney and expert witness (D.85-10-009, p. 2). In accordance with previous Commission decisions, TURN states that reimbursement for time spent preparing TURN's compensation pleadings (more typical of traditional attorney work) is calculated at the base rate only, without the efficiency adder. TURN alleges that the hourly rates requested for Mr. Singer and Mr. Barmore are consistent with those requested by TURN in other proceedings involving these attorneys.

The hourly rates requested for TURN's attorneys are rates we have previously approved for these attorneys. The adder requested for Mr. Florio's dual role as attorney and witness is also consistent with our previous awards. We find that the requested hourly rates are reasonable and do not exceed the market rates for attorneys of TURN's attorneys' training, experience, and expertise.

The hourly rates requested for Mr. Marcus and his associates are the actual billing rates charged to TURN by JBS Energy, Inc. None of these hourly figures has been increased over levels previously approved by this Commission, and we find those hourly rates to be reasonable.

The Requested Hours

TURN maintains that its request for a total of 390.75 hours was estimated consistent with D.85-08-012, which determined guidelines for allocating time to issues on which an intervenor prevails. TURN points out that the guidelines recognize that allocation of time by issue is more difficult in expedited offset proceedings, such as this ACAP, where a large number of subjects are discussed and interact in a very compressed timeframe.

TURN submits that the time spent on pleadings related to the few issues on which it did not prevail have been excluded. TURN points out that a significant number of TURN's hours fall into the "general" or unallocable category. TURN contends that review of other parties' filings, for example, often covers a range of various "issues." Preparation for briefing involves the review of hearing transcripts, which cover the full gamut of subjects. Similarly, the preparation of the compensation filings themselves is inherently common to all issues. However, TURN argues that the number of general hours should not present a problem in this case, since it prevailed in whole or in part on virtually all of the major issues it addressed. TURN concludes that this is clearly a case where, under the guidelines, it should receive full compensation for all of its general unallocable time.

TURN's allocation of time is reasonable, and we will adopt it subject to one adjustment. TURN's request included 18 hours of Mr. Florio's time for preparing the request for compensation and 6.5 hours for preparing the request for eligibility. In D.91-07-001, we decided not to award compensation for time spent preparing requests for compensation. Accordingly,

we will reduce the basis for TURN's compensation by 188 hours at a rate of \$175, or by \$3,150. ~~These costs are reasonable and~~
Other Reasonable Costs ~~are reasonable and~~

TURN seeks \$2,628.00 for copying, postage, telephone, ~~and~~ fax, witness and attorney expenses. These costs are reasonable and will be adopted. ~~will be adopted~~

Conclusion ~~As discussed in previous Commission decisions, this order~~

TURN is entitled to compensation of \$67,865.00 ~~plus interest~~
As discussed in previous Commission decisions, this order will provide for interest commencing on December 25, 1990 (the 75th day after TURN filed its request) and continuing until full payment of the award is made. ~~As discussed in previous Commission decisions, this order~~

TURN is placed on notice it may be subject to audit or review by CACD. Therefore, adequate accounting records and other necessary documentation must be maintained and retained by the organization in support of all claims for intervenor compensation. Such recordkeeping systems should identify specific issues for which compensation is being requested, the actual time spent by each employee, the hourly rate paid, fees paid to consultants and any other costs for which compensation may be claimed.

Findings of Fact

1. TURN requests \$71,015, plus interest after December 25, 1990, for its participation in this proceeding.
2. TURN was found eligible for compensation in D.90-09-024.
3. TURN prevailed on several issues in this proceeding and therefore made a substantial contribution to D.90-04-021 as required by Rule 76.56 in order for an intervenor to qualify for compensation.
4. TURN's requested hourly fees for its attorneys are reasonable for attorneys of their training, experience, and expertise. The "efficiency adder" for Mr. Florio is consistent with prior Commission decisions.

5. TURN's allocation of time between issues and resulting requested hours are consistent with Commission guidelines.

6. TURN should not be compensated for the time required to prepare its request for compensation.

7. TURN's request for \$2,628 in "other" costs is reasonable.

Conclusions of Law

1. TURN's requested hourly rates for its attorneys are reasonable and should be adopted.

2. TURN's request for a \$25 "efficiency adder" to the basic hourly fee to recognize Mr. Florio's dual role as attorney and witness should be granted.

3. TURN's allocation of time to various issues is reasonable and should be adopted.

4. TURN's request for \$2,628.00 in "other" costs is reasonable and should be granted.

5. TURN made a substantial contribution to D.90-04-021.

6. PG&E should be ordered to pay TURN \$67,865, plus interest accrued after December 25, 1990.

ORDER

IT IS ORDERED that Pacific Gas and Electric Company (PG&E) shall pay Toward Utility Rate Normalization (TURN) \$67,865 within 15 days as compensation for TURN's substantial contribution to D.90-09-024. PG&E shall also pay TURN interest on this amount, calculated at the three-month commercial paper rate, beginning December 25, 1990, and continuing until full payment of the award is made.

This order is effective today.

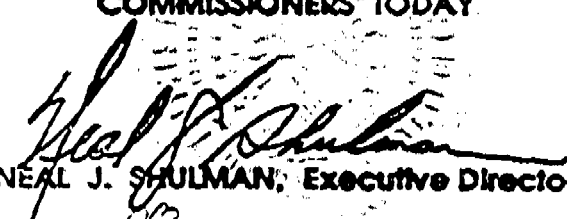
Dated September 6, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

I abstain.

/s/ G. MITCHELL WILK
Commissioner

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


NEAL J. SHULMAN, Executive Director